THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 07.02.2008

\+ **CS (OS) No.265/2006**

M/S FAIR DEAL AGENCIES & ANOTHER ... Plaintiffs

- versus -

M/S INNER MONGOLIA MUWANG ANIMAL BY-PRODUCT COMPANY LIMITED & OTHERS ... Respondents

Advocates who appeared in this case:

For the Plaintiffs	:	Ms Amrita Sanghi with Mr Devendra Singh
For the Defendant No.1	:	Mr Jayant Bhushan, Sr Advocate with Ms Mamta Tiwari, Mr Prateek Kumar
For the Defendant No.2	:	Mr N.S. Bajwa
For the Defendant No.3.	:	Mr A.P.S. Ahluwalia

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes

2. To be referred to the Reporter or not ? Yes

3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J (ORAL)

1. By the order dated 23.07.2007, the following issues were framed:-

> "1. Whether the letters of credit are not liable to be honoured on account of any fraud ? OPP
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> 2. Whether this Court has no territorial jurisdiction to try and determine the present suit ? OPD

3. Relief"

Issue No.2:

2. Since issue No.2 pertains to the jurisdiction of this court to try and determine the present suit, it would be appropriate to take up consideration of that issue first. The objection as to jurisdiction had been taken by the defendant No.3. The entire case as set out in the plaint concerns two Letters of Credit. The plaintiff had filed this suit seeking an injunction against the defendant No.3 (the issuing bank of the two letters of credit) restraining it from making payments. The letters of credit were issued at the request of the plaintiff because the plaintiff had ordered certain goods from the defendant No.1 through the defendant No.2. It is the case of the plaintiff that the documents submitted by the plaintiff to its bankers (Bank of China) [the negotiating bank] were contrary to the terms of the letters of credit. It is alleged by the plaintiff that this constituted not only breach of terms of the letters of credit, but the breaches were grave enough to be construed as fraud. It was also contended on behalf of the plaintiff that since there is no established legal system in China, if the injunction is not granted, then the plaintiff would be left without any recourse insofar as payments under the letters of credit are concerned. It was also contended on behalf of the plaintiff that the plaintiff had ordered non-alloy steel, whereas what had been shipped to the plaintiff by the defendant No.1 was alloy steel. This, however, has been controverted by the learned counsel appearing on behalf

of the defendant No.1 that the plaint does not carry any such statement. It has also been contended that the goods were supposed to have been on CIF basis, but the plaintiff was required to pay freight at ICD, Tughlakabad and this, according to the plaintiff, would clearly indicate that the condition of the letters of credit that the goods were to be shipped on CIF basis had been violated. It is on the basis of these alleged breaches and discrepancies that the present suit had been filed seeking an injunction against the defendant No.3 (issuing bank) from releasing payments in respect of the documents submitted to it through the negotiating bank (Bank of China). This is the background of the case.

3. It was contended by the learned counsel for the defendant No.3 that this court does not have jurisdiction to entertain the present suit. He drew my attention to the memo of parties which clearly indicated that both the plaintiffs have their businesses at Jallandhar, Punjab. The defendant No.1 is located in China and the defendant No.3 (Punjab National Bank, International Banking Branch) is also located at Civil Lines, Jallandhar, Punjab. The learned counsel drew my attention to paragraph 1 of the plaint which states that the plaintiff No.1 is a trading division of the plaintiff No.2 which has its registered office at Nehru Garden Road, Jallandhar, Punjab. It is an admitted position between the parties that the plaintiffs approached the defendant No.3 at Jallandhar for the purposes of opening the letters of credit in question. Both the letters of credit were opened by the defendant No.3 at

its Jallandhar Branch. Paragraph 28 of the plaint was also brought to my notice. The contents thereof relate to the averments with regard to cause of action. It is alleged therein that the cause of action arose in favour of the plaintiff and against the defendant in the first week of July, 2005 when the agent of the defendant No.1 contacted the plaintiff with regard to sourcing of the goods in question from China. It is further alleged that the cause of action also arose when the plaintiff opened the letters of credit in favour of the defendant No.1 on 22.08.2005 and that it again arose in favour of the plaintiff and against the defendant No.1 when the plaintiff was required to pay demurrage charges for release of the goods in question in Delhi as well as in Mumbai on or about 25.11.2005 on the alleged fraud of the defendant No.1. The plaintiff also alleged that the cause of action was a continuing and subsisting one since the defendant No.1 had failed to honour its commitment under the commercial bargain as stipulated in the letters of credit opened in favour of the defendant No.1. The only allegation with regard to cause of action in respect of defendant No.3 was as under:-

> "... Defendant No.3 is also intending to remit the payment under the two outstanding Letters of Credit to Defendant No.1 despite being aware of the fraud and that the documents were not in accordance with the Letters of Credit."

4. Having read the contents of paragraph 28 of the plaint, the learned counsel for the defendant No.3 submitted that as per the pleadings, no part of the cause of action has even been alleged to have taken place in Delhi. He submits that the prayers also indicate that the only relief that is sought in

this suit is with regard to injuncting and / or restraining the defendant No.3 from negotiating and / or releasing payments in respect of the Letters of Credit bearing Nos. LC No.2999FLC02004/05: USD 1,52,880 and LC No.2999FLC02005/05: USD 1,09,200 which had been issued by the defendant No.3 at the request of the plaintiff in favour of the defendant No.1. It was contended that no relief whatsoever has been claimed either against the defendant No.1 or defendant No.2.

5. The learned counsel appearing for the defendant No.3 submitted that the question of jurisdiction has to be decided in terms of the provisions of Section 20 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'). He submits that although the defendant No.3 has its registered office in Delhi, but no part of the cause of action has arisen in Delhi. Therefore, reading the provisions of Section 20 (a) CPC with the explanation appended to the said provision, the only place which would have jurisdiction would be Jallandhar inasmuch as no part of the cause of action had arisen in Delhi and the entire cause of action had arisen, if at all, insofar as the defendant No.3 is concerned, at Jallandhar. He further submitted that Section 20 (b) may also be considered because in this case, there are more defendants than one and both the defendant No.1 and the defendant No.3 are admittedly not residing within the territorial jurisdiction of this court. In this regard, he submits that the leave of the court ought to have been taken for suing the defendant No.3 in this court. Such leave was

not even applied for apart from the fact that it could not have been granted in any event, because no part of the cause of action arose in Delhi and no relief was claimed against the defendant No.2 which was the only defendant located in Delhi.

6. The learned counsel for the defendant No.3 placed reliance on the following decisions:-

1) ***M/s Patel Roadways Limited, Bombay v. M/s Prasad Trading Company*: AIR 1992 SC 1514**;

2) ***Kensoft Infotech Ltd v. R.S. Krishnaswami & Others*: 146 (2008) DLT 657**;

3) ***Shri Ganesh Research Institute v. Union of India and Others* :115 (2004) DLT 410**.

7. He submitted that since the entire alleged cause of action, insofar as the letters of credit are concerned, had arisen in Jallandhar and no part of the cause of action had arisen in Delhi, this court would not have any jurisdiction to entertain the present suit.

8. The learned counsel for the plaintiff was of the view that this court would have jurisdiction. She submitted that her case was for grant of injunction in respect of the said letters of credit on three separate grounds. The first being fraud; the second being irreparable injustice and the third being discrepant documents. She submitted that the letter of credit itself, as can be seen from Exhibit P-15, carried the condition that the goods were to

be shipped to ICD Tughlakabad, New Delhi. It was her contention that since the letter of credit itself mentions Delhi as a destination for the goods, therefore, this court would have territorial jurisdiction in deciding the disputes raised in this suit. The learned counsel then placed reliance on the Supreme Court decision in the case of ***A.B.C. Laminart Pvt. Ltd. and Anr. v. A.P. Agencies, Salem*: 1989 (2) SCC 163**. She made a particular reference to paragraph 15 of the said decision which reads as under:-

> "15. In the matter of a contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was made is part of the law of contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have performed or its performance completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else. In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving jurisdiction to the Court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears. The above are some of the connecting factors."
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> (underlining added)

Reading the aforesaid extract, she submitted that the Supreme Court had clearly stated that in suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payments are to be made by the agent. She submitted that the defendant No.2 was the agent acting both on behalf of the plaintiff as well as the defendant No.1 and because the defendant No.2 resided in Delhi, this court would have territorial jurisdiction. I am unable to agree with this contention raised on behalf of the learned counsel counsel for the plaintiff. The present suit is not a suit on an agency action. It is a suit seeking injunction against the bank from negotiating the letters of credit and that is an entirely different kind of suit. The defendant No.2 has no role to play whatsoever in the present action between the plaintiff and the defendant No.3 against whom the present suit is directed. Therefore, the presence of defendant No.2 in Delhi is of no consequence.

9. The learned counsel for the plaintiff further submitted that Section 20 (c) CPC would be attracted as part of the cause of action has arisen within the territorial precincts of this court. She submitted that a part of the cause of action has arisen in Delhi because: (1) the goods were to be delivered at Delhi as per the letters of credit; (2) freight charges were paid by the plaintiffs in Delhi which also goes to show that the letters of credit, which indicated that the goods were to be shipped on CIF basis, were not adhered to inasmuch as the plaintiffs had to pay freight; (3) the defendant No.2, who

is the agent between the plaintiff and the defendant No.1, is in Delhi; (4) the letters of credit have been established at the request of the plaintiff No.1 by the defendant No.3 on the basis of an Import Indent which had been allegedly raised by the defendant No.2 from Delhi.

10. In ***Tarapore & Company v. V/O Tractoroexport and Anr.*****: 1969 (1) SCC 233**, the Supreme Court had observed that an irrevocable letter of credit had a definite implication and that it was independent of, and unqualified by, the contract of sale or other underlying transactions. The letter of credit was a mechanism of great importance in international trade and that any interference with that mechanism was bound to have serious repercussions. In ***U.P. Cooperative Federation Ltd.v. Singh Consultants and Engineers (P) Ltd.*****: 1988 (1) SCC 174**, the Supreme Court quoted with approval the *article of Paul R. Verkuil* which set out the salient features of a letter of credit. The said article indicated that the letter of credit is a contract. The issuing party, usually a bank, promises to pay the 'beneficiary', traditionally a seller of goods, on demand if the beneficiary presents whatever documents may be required by the letter. They are normally the only two parties involved in the contract. The bank which issues a letter of credit acts as a principal, not as an agent for its customers and engages its own credit. The letter of credit thus evidences an irrevocable obligation to honour the draft presented by the beneficiary upon compliance with the terms of the credit. In ***U.P. Coop Federation Ltd***

(supra), the Supreme Court further explained the importance of the letter of credit as a means of doing business where the buyer and seller were separated by geography. The words used by the Supreme Court are as under:-

> "45. The letter of credit has been developed over hundreds of years of international trade. It was most commonly used in conjunction with the sale of goods between geographically distant parties. It was intended to facilitate the transfer of goods between distant and unfamiliar buyer and seller. It was found difficult for the seller to rely upon the credit of an unknown customer. It was also found difficult for a buyer to pay for goods prior to their delivery. The bank's letter of credit came into existence to bridge this gap. In such transactions, the seller (beneficiary) receives payment from issuing bank when he presents a demand as per terms of the documents. The bank must pay if the documents are in order and the terms of credit are satisfied. The bank, however, was not allowed to determine whether the seller had actually shipped the goods or whether the goods conformed to the requirements of the contract. Any dispute between the buyer and the seller must be settled between themselves. The Courts, however, carved out an exception to this rule of absolute independence. The Courts held that if there has been "fraud in the transaction" the bank could dishonour beneficiary's demand for payment. The Courts have generally permitted dishonour only on the fraud of the beneficiary, not the fraud of somebody else."

11. Article 3 of ***The Uniform Customs & Practices for Documentary Credits (1983)*** also makes it clear that credits (Letters of Credit), by their nature are separate transactions from the sales or other contract(s) on which they may be based and banks are in no way concerned with or bound by such contract(s), even if any reference whatsoever to such contract(s) is included in the Credit (Letter of Credit). It is further provided that

consequently, the undertaking of a bank to pay, accept and pay draft(s) or negotiate and / or to fulfil any other obligations under the Credit, is not subject to claims or defences by the applicant resulting from his relationship with the issuing bank or the beneficiary. These circumstances make it abundantly clear that whether the goods were to be delivered at Delhi, whether the freight charges were paid by the plaintiff at Delhi and whether the agent which organised the alleged transaction between the plaintiff and the defendant No.1 resided at Delhi are of no consequence to the contract which is evidenced by the letter of credit. The letters of credit in question are entirely separate contracts which have no connection with anything that has happened in Delhi. The letters of credit were issued at the instance of the plaintiff by the defendant No.3 at Jallandhar. Consequently, Issue No.2 is decided against the plaintiff and in favour of defendant No.3. This court does not have jurisdiction to entertain the present suit which is entirely and purely for an injunction restraining the defendant No.3 from negotiating and / or honouring the letters of credit in question. That being the position, the provisions of Order 7 Rule 10, which enables the court to return the plaint to be presented to a court in which the suit should have been instituted, would come into play.

12. Before parting with the discussion under the issue concerning jurisdiction, it would also be relevant to note that though the defendant No.3's registered office is in Delhi, this court would not have jurisdiction to

entertain the present suit. This is so because the registered office of the defendant No.3 is not its sole office. It has subordinate offices at various places, including Jallandhar. The cause of action has entirely arisen at Jallandhar and, therefore, in view of the explanation appended to Section 20 CPC, the defendant No.3 shall be deemed to carry on business at Jallandhar for the purpose of the present suit. In ***Patel Roadways*** *(supra)*, the explanation to Section 20 CPC was considered in detail. The Supreme Court was clearly of the view that it was not the intention of the legislature that a suit against a corporation could be instituted either at the place of its sole or principal office (whether or not the corporation carried on business at that place) or at any other place where the cause of action arises. The Supreme Court observed:-

> "The linking together of the place where the cause of action arises with the place where a subordinate office is located clearly shows that the intention of the legislature was that, in the case of a corporation, for the purposes of Clause (a), the location of the subordinate office, within the local limits of which a cause of, action arises, is to be the relevant place for the filing of a suit and not the principal place of business. If the intention was that the location of the sole or principal office as well as the location of the subordinate office (within the limits of which a cause of action arises) are to be deemed to be places where the corporation is deemed to be carrying on business, the disjunctive "or" will not be there. Instead, the second part of the explanation, would have read ' and, in respect of any cause of action arising at any place where it has a subordinate office, also at such place"."

13. The same view has been expressed by the Supreme Court in a later decision in the case of ***New Moga Transport Company, through its Proprietor Krishanlal Jhanwar v. United India Insurance Co. Ltd. and***

***Ors.*: 2004 (4) SCC 677**. It is, therefore, clear that merely because the defendant No.3 has its registered office in Delhi would not be sufficient for clothing this court with jurisdiction to entertain the present suit. Since the defendant No.3 has a branch office / subordinate office at Jallandhar and that is the place where the cause of action has arisen, it is the courts at Jallandhar which would have jurisdiction as the defendant, for the purposes of this suit, would be deemed to carry on business at Jallandhar. This court does not have jurisdiction to entertain the present suit.

Issue No.1.

14. In view of the decision on the question of jurisdiction under Issue No.2, this court cannot enter into a discussion on the merits and demerits of this issue.

15. Consequently, the plaint be returned to the plaintiff for filing before the appropriate court. All interim orders stand vacated.

(BADAR DURREZ AHMED)
JUDGE

February 7, 2008
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